



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF MORTGAGE LENDING
7220 Bermuda Road, Suite A
Las Vegas, NV 89119
(702) 486-0780 Fax (702) 486-0785
www.mld.nv.gov

TERRY JOHNSON
Director

JAMES WESTRIN
Commissioner

Memorandum

Date: August 20, 2012

To: Wholesale Mortgage Lenders

From: Jim Westrin, Commissioner
Division of Mortgage Lending

Re: Clarification of Licensing Requirements for Wholesale Lenders

The Division of Mortgage Lending (the “Division”) has received several questions related to the licensing obligations and requirements of persons engaged in the business of a “wholesale lender”¹ under the Nevada Mortgage Brokers and Mortgage Agents Act² (hereinafter, the “Act”).

The purpose of this communication is to provide clarification concerning the licensing requirements for a wholesale lender making loans secured by a lien on real property in the state of Nevada.

Section 0127(c)-(d) of the Act³, defines “mortgage broker” to include a person directly or indirectly:

- (c) Holds himself or herself out as being able to make loans secured by liens on real property;
- (d) Holds himself or herself out as being able to buy or sell notes secured by liens on real property...

¹ The term “wholesale lender” is neither used nor defined in the Nevada Mortgage Brokers and Mortgage Agents Acts, NRS 645B.010 *et seq.*, the Nevada Mortgage Bankers Act, NRS 645E.010 *et seq.*, or their accompanying regulations, NAC 645B.001 *et seq.* and NAC 645E.010 *et seq.* However, a “wholesale lender” is generally a lender that uses an origination strategy by which it purchases loans from mortgage brokers, mortgage bankers, or other loan originators. Depending upon its business model, a “wholesale lender” may purchase the loan prior to closing, at closing, or after closing.

² NRS 645B.010 *et seq.*

³ NRS 645B.0127(c)-(d).

Unless a person is otherwise exempt, a person is prohibited from offering or providing any of the services of a mortgage broker or otherwise engaging in, carrying on or holding himself or herself out as engaging in or carrying on the business of a mortgage broker without first obtaining the applicable license under the Act.⁴ A wholesale lender's business activities generally meet the definition of "mortgage broker" and would require licensure, unless the wholesale lender is otherwise exempt from the licensing requirements.

The Act provides several exemptions from licensing requirements, which are generally set forth in § 15 of the Act.⁵ There is not an exemption set forth in § 15 or otherwise that would specifically exempt a person acting as a wholesale lender in the state of Nevada from the licensing requirements. However, the Nevada Administrative Code (the "Regulation") provides that a person is not acting as a "mortgage broker" if the person only "offers to provide money to invest in loans secured by an interest in real property" to a person licensed or exempt under the Act.⁶

With respect to its application to wholesale lenders, the Division interprets the exclusionary language set forth in the Regulation to exclude a person that is a wholesale lender that only provides a funding source for a licensed or exempt mortgage broker to close and fund as the lender of record, a loan secured by real property in the state of Nevada. After closing the loan in its own name as the lender of record, the licensed or exempt broker may assign the closed or funded loan to the wholesale lender. In this scenario, the wholesale lender is excluded from the definition of "mortgage broker" because it is only providing funds to a licensed or exempt mortgage broker to invest in loans secured by an interest in real property, and, therefore, would not be required to obtain licensure as a "mortgage broker". However, if the wholesale lender buys the note or purchases the assignment of the note from the licensed or exempt mortgage broker, rather than taking an assignment, the wholesale lender is acting as a "mortgage broker", and is required to be licensed as a mortgage broker, because it has held itself out as "being able to buy or sell notes secured by liens on real property".

If, however, the "wholesale lender" funds and closes a loan secured by real property in the state of Nevada in its own name as the lender of record, it has held itself out as being able to make, and has in fact made, a loan secured by a lien on real property and is required to obtain a mortgage broker license.

Accordingly, unless the "wholesale lender" is only providing a funding source to a licensed or exempt mortgage broker so that the licensed or exempt mortgage broker can fund and close the loan in its own name as the lender of record and then hold the note or later assign it to the wholesale lender, the "wholesale lender" is acting as a mortgage broker and is required to obtain a license.

⁴ See NRS 645B.900.

⁵ NRS 645B.015.

⁶ NAC 645B.017 (emphasis added).

In summary, a person acting as a “wholesale lender” is required to obtain a license as a mortgage broker if:

1. The wholesale lender closes and funds a loan secured by real property in the state of Nevada in its own name as the lender of record.
2. The wholesale lender buys a loan secured by real property in the state of Nevada from a mortgage broker after closing.

A person acting as a “wholesale lender” is not required to obtain a license as a mortgage broker if:

1. The wholesale lender only provides a funding source for a licensed or exempt mortgage broker to fund and close, in the licensed or exempt brokers name as the lender of record, a loan secured by real property in the state of Nevada.

On or before October 1, 2012, any person currently operating as a “wholesale lender” that is conducting its business in a way that requires licensure as a mortgage broker, as explained above, must make application for and obtain a license as a mortgage broker.

Any person continuing to conduct wholesale lender activity after December 31, 2012, that is required to be licensed as a mortgage broker and that has not applied for licensure, will be subject to administrative disciplinary action.

If licensed as a mortgage broker in the state of Nevada, please provide your NMLS Unique Identifier Number and return a copy of this memorandum to the Division at the address listed at the top of page one.

Name of Company	NMLS Unique Identifier Number

If you have any questions concerning this communication, please contact the Division at (702) 486-0782.